



V. Douglas
#102-7-03
PATENT

Customer No. 22,852
Attorney Docket No. 05725.0869-02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
Jean-Louis H. GUERET) Group Art Unit: 3732
)
Application No.: 09/809,268) Examiner: Eduardo C. ROBERT
)
Filed: March 16, 2001)
)
For: PRODUCT APPLICATOR AND)
PACKAGING UNIT COMPRISING)
SUCH APPLICATOR)

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JAN 23 2003

Assistant Commissioner for Patents
Washington, DC 20231

TECHNOLOGY CENTER R3700

Sir:

REQUEST FOR RECONSIDERATION

In response to the Office Action dated October 22, 2002, Applicant respectfully requests reconsideration of the application in view of the following remarks.

Claims 23-222 are pending in the application. Claims 23-135, 138-145, 147, 153-155, 157-160, 162, 164-173, 176-178, 180-188, and 191-222 have been withdrawn from consideration by the Examiner. Applicant respectfully traverses the withdrawal of these claims from consideration by the Examiner.

The Examiner asserts that these claims do not read on elected Species IV.

Applicant respectfully disagrees with that assertion and submits that the description provided, for example, in the Summary of the Invention (pages 2-6) applies to Species IV, *where stated* as well as at least some of the other alleged species. Thus, the subject matter recited in withdrawn claims 23, 24, 26-34, 36-135, 138-145, 147, 153-155, 157-160,

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162, 164-173, 176-178, 180-188, and 191-222 is at least described with respect to FIG. 4 in the Summary of the Invention. Accordingly, those claims should be examined.

In the Office Action, the Examiner rejected claims 136, 137, 146, 148-152, 156, 161, 163, 174, 175, 179, 189, and 190 under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicant respectfully traverses these rejections.

The Examiner asserts that "the phrase 'spongy flexible material' is indefinite because it is unclear how the materials other than sponge have to resemble the sponge to satisfy the limitations of the claims." Applicant does not understand the Examiner's confusion and submits that the phrase should be construed in accordance with its plain language. For example, the term "spongy" is defined as "resembling a sponge in elasticity, absorbency, or porousness." American Heritage College Dictionary, 3d ed., 1997. Thus, "spongy flexible material" refers to flexible material that resembles a sponge in elasticity, absorbency, and/or porousness.

The Examiner further alleges that the meaning of the phrase "configured in the form of a handle" is unclear. Once again, the phrase should be construed in accordance with its plain language. For example, the term "handle" is defined as "a part that is designed to be held or operated with the hand." American Heritage College Dictionary, 3d ed., 1997. Thus, the claim recitation that "the gripping portion is configured in the form of a handle" refers to the gripping portion being configured in the form of a part that is to be held or operated with the hand. Accordingly, Applicant respectfully requests that the § 112 rejections be withdrawn.

Claims 136-151, 163, 189, and 190 were rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16

of U.S. Patent No. 5,913,318 to Gueret. Applicant does not necessarily agree with the Examiner's assertions about the present claims and the patented claims. Regardless, Applicant will consider submitting a Terminal Disclaimer upon receiving an indication that the claims are otherwise allowable.

In addition, claims 136, 137, 146, 148-152, 156, 161, 163, 174, 175, 179, 189, and 190 were rejected under 35 U.S.C. §102(b) over U.S. Patent No. 3,179,108 to Bloch et al. Applicant respectfully traverses this rejection.

Regarding independent claim 136, Bloch et al. does not disclose or suggest an applicator including, *inter alia*, "an elongated flexible support having a first planar surface and a second planar surface." The Examiner generally alleges that Figure 3 of Bloch et al. discloses an applicator comprising a first planar surface and a second planar surface. To the contrary, Bloch et al. discloses a stick 16 in the form of a hollow tubing (e.g., col. 4, lines 5-16) having a diameter (e.g., col. 3, line 70) and wads 17 of fibrous absorbent material secured to each of its ends. "Tubing" refers to a hollow cylinder having a circular cross-section (see Figures 2 and 4), and a "diameter" is a characteristic of a circle. American Heritage College Dictionary, 3d ed., 1997. As shown in Figures 2 and 4, the stick 16 has a curved surface defining a substantially circular cross-section in a transverse plane. Accordingly, Bloch et al. does not disclose, teach, or suggest a support having a first planar surface and a second planar surface, as recited in claim 136. Therefore, the § 102(b) rejection of claim 136 should be withdrawn.

In an apparent statement directed to claim 156, the Examiner asserted that in Bloch et al., the "layers of spongy flexible material appears [sic] to be thicker than [the]

support." Applicant respectfully disagrees and reminds the Examiner that when the disclosure gives no indication that the drawings are to scale, "it is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to shown particular sizes if the specification is completely silent on the issue." *Hockerson-Halberstadt, Inc. v. Avia Group Int'l*, 222 F.3d 951, 956, 55 U.S.P.Q. 1487, 1491 (Fed. Cir. 2000).; see also, M.P.E.P. § 2125. Bloch et al. does not indicate that the drawings are to scale and does not disclose the size of, or dimensional relationships between, the stick 16 and the wads 17. Accordingly, Bloch et al. cannot be relied upon for a dimensional relationship that "appears to be" in the drawings.

Claims 137, 146, 149-152, 156, 161, 163, 174, 175, 179, 189, and 190 depend from claim 136 and, therefore, are allowable for at least the same reasons claim 136 is allowable.

Further, the Office Action contains numerous characterizations of the invention, the claims, and the related art, with which Applicant does not necessarily agree. Unless expressly noted otherwise, Applicant declines to subscribe to any statement or characterization in the Office Action.

Applicant notes that the Examiner did not contact the undersigned to schedule an interview, as requested in the Preliminary Amendment filed March 16, 2002, at page 41. In addition, Applicant's representative has recently attempted, unsuccessfully, to contact the Examiner on several occasions to arrange an interview to discuss the withdrawal of claims and the above rejections. If the Examiner continues the withdrawal of the claims and/or the claim rejections, Applicant respectfully requests that the Examiner call Applicant's undersigned attorney at (202) 408-4252 to schedule a personal interview.

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Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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Dated: January 22, 2003

By: _____


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